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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,637	06/19/2006	Max Wyssmann	699/44979	8639
23646 7590 06/16/2009 BARNES & THORNBURG LLP 750-17TH STREET NW SUITE 900 WASHINGTON, DC 20006-4675			EXAMINER DOUKAS, MARIA E	
			ART UNIT	PAPER NUMBER
			3767	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/596,637

Applicant(s)

WYSSMANN, MAX

Examiner

MARIA E. DOUKAS

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date 3/2/2009.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application.
- 6) ☐ Other: _____.

DETAILED ACTION

This office action is in response to communication filed on 3/2/2009. Claims 1 and 3-12 remain pending in this application.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5, and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,741,275 to Wyssmann (Wyssmann) in view of U.S. Patent No. 4,646,925 to Nohara (Nohara).

In Reference to Claims 1, 3, 5, 7

Wyssmann teaches a device (Figure 4) for deliberate, controllable delivery or drawing of a liquid or viscous substance (col. 2, lines 37-40), comprising: a cylindrical reservoir (container 1; col. 3, lines 57-58) having a piston (piston 6) dividing the reservoir into a storage chamber (mass chamber 5) for the viscous substance and a pressure chamber (gas chamber 4) for gas, wherein the piston is positioned to be moveable longitudinally within the reservoir (col. 12, lines 30-32); the storage chamber for the viscous substance leading into a discharge opening (Figure 4) in the reservoir for

the viscous substances; an insert (clamping device 12) in the pressure chamber which insert contains at least one gas generating cell (gas evolution cell 8) and a circuit (load resistor 9) for the running-time control. Wyssmann fails to teach wherein the wall of the reservoir is constructed in three transparent layers (an inner, central, and outer layer), at least two of the layers consisting of different chemical substances, with the central layer having a lower diffusion coefficient for gas to be generated by the gas generating cell than the inner and outer layers.

Nohara teaches a multi-layer preform that can be used to form and process a transparent multi-layer container (col. 1, lines 23-44). The multi-layer container has a polyester (e.g. PET; col. 1, lines 40-47) inner layer 8 and outer layer 10 and a gas-barrier resin (e.g. EVOH; col. 1, lines 40-47) intermediate layer 9 (Figure 1). The intermediate layer provides a gas barrier, which would provide the claimed lower diffusion coefficient for gas of the central layer (col. 1, lines 23-44; col. 2, lines 43-61) as the gas barrier provides lower gas permeability, which indicates a lower gas diffusion coefficient. Further, because the construction of the layers with PET as the outer and inner layer and EVOH as the central layer of the prior art is the same as that claimed by applicant to provide the lower diffusion coefficient of the central layer and transparency of the layers, there is no patentable distinction in structure between that claimed and that taught by the prior art. Nohara teaches this three-layer construction in order to provide a container that provides both the advantages of a PET container as well as provides improved gas barrier properties (col. 1, lines 23-44).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the container 1 of Wyssmann to have a transparent multi-layered wall composed of an inner PET layer, an outer PET layer, and an intermediate EVOH layer as taught by Nohara in order to provide a container that provides both the advantages of a PET container as well as provides improved gas barrier properties (col. 1, lines 23-44). Further, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (*In re Leshin*, 125 USPQ 416).

In Reference to Claims 8-10

Wyssmann in view of Nohara teaches the device of claim 1 (see rejection above). Nohara further teaches that the thickness of the intermediate resin layer can be adjusted to an optional level that is necessary to attain the desired gas-barrier effect (col. 6, lines 21-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the thickness of the intermediate layer of the container of Wyssmann in view of Nohara in order to have the claimed thickness range, as it has been held that when the general conditions of a claim are disclosed in the prior art, discovering an optimum or workable range involves only routine skill in the art (*In re Aller*, 105 USPQ 233). Further, to obtain the claimed ranges would involve a mere change in size of the thickness of the intermediate layer, and a change in size is generally recognized as being within the level of ordinary skill in the art (see MPEP §2144.04).

3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,741,275 to Wyssmann (Wyssmann) in view of U.S. Patent No. 4,646,925 to Nohara (Nohara) as applied to claim 1 above, and further in view of U.S. Patent Application Publication No. 2005/0037165 to Ahern (Ahern).

In Reference to Claim 6

Wyssmann in view Nohara teaches the device of claim 1 (see rejection of claim 1 above) but fails to teach wherein the center layer comprises polyamide. Ahern teaches a multi-layer container with a central layer that can comprise polyamide (paragraph [0026]) in order to provide a material that inhibits the passage of gases through the polymer wall (paragraph [0023]).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the central layer of Wyssmann in view of Nohara to comprise polyamide as taught by Ahern in order to provide a material that inhibits the passage of gases through the polymer wall (paragraph [0023]). Further, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (*In re Leshin*, 125 USPQ 416).

4. Claims 4 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,741,275 to Wyssmann (Wyssmann) in view of U.S. Patent No.

4,646,925 to Nohara (Nohara) as applied to claim 1 above, and further in view of U.S. Patent No. 5,363,890 to Yeung (Yeung).

In Reference to Claims 4, 11, and 12

Wyssmann in view of Nohara teaches the device of claim 1 (see rejection of claim 1 above) but fails to teach a closing device that can be detached and is molded to the discharge opening. Yeung teaches a membrane closure 70 that contains a skirt 80 and support ring 74 that provides a closing device for a bottle (Figures 11-12), wherein there are breaking points (notches 78) in order to provide a water tight seal at the bottle opening that can be opened to allow fluid flow from the bottle (col. 2, lines 4-8).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the container of Wyssmann to have the membrane closure with support ring and notches at the discharge opening as taught by Yeung in order to provide a water tight seal at the container opening that can be opened to allow fluid flow from the container (col. 2, lines 4-8).

Response to Arguments

5. The amendment to claim 12 is accepted and the rejection to claim 12 under 35 USC 112, second paragraph is withdrawn.
6. Applicant's arguments with respect to claims 1 and 3-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MARIA E. DOUKAS** whose telephone number is (571)270-5901. The examiner can normally be reached on **Monday - Friday 7:30 AM - 5:00 PM EDT**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MD
/Kevin C. Sirmons/
Supervisory Patent Examiner, Art Unit 3767